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ONE HUNDRED SIXTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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March 30, 2000

The Honorable Janet Reno
Attorney General
United States Department of Justice
Washington, D.C. 20530

Re: Criminal Referral of Daniel A. Barry

Dear General Reno:

I am writing to refer to you information about possible violations of law that have been uncovered in the course of the Committee's investigation of the White House e-mail system. The Committee has learned that Daniel A. Barry, the Deputy Data Center Manager/Electronic Records Manager in the Executive Office of the President may have made false statements under oath in civil litigation relating to the White House's handling of confidential FBI files. I urge you to give these charges the serious examination they deserve. As I will explain below, the only way that this referral can receive serious attention is if it is referred to a special counsel.

At all relevant times during the civil litigation, *Alexander v. FBI*, Mr. Barry was represented by attorneys in the Justice Department's Civil Division. Justice Department lawyers oversaw the preparation of Mr. Barry's affidavit which now appears to be perjurious. Justice Department lawyers filed that affidavit in court. Accordingly, any examination of the issues raised by this referral will include an investigation of the role of Justice Department attorneys in offering false testimony in the *Alexander* lawsuit. As I have explained in two earlier letters, I do not believe that the Justice Department can carry out a credible investigation of the White House e-mail system. Accordingly, I have called on you to appoint a special counsel to investigate the allegations against the White House. To date, you have ignored my call. However, now that there is evidence that the Justice Department itself may have been involved in preparing and presenting false testimony relating to the White House e-mail system, I cannot see that you have any choice but to appoint a special counsel.

A. Daniel Barry's Role in the E-Mail Matter

As the Deputy Data Center Manager/Electronic Records Manager in the Executive Office of the President, Mr. Barry is responsible for managing the Automated Records Management System ("ARMS"), and in fact, was one of the primary designers of the ARMS system. As the ARMS manager, Barry receives requests and processes search requests from the White House Counsel's office in response to subpoenas and document requests.

Barry first became aware of an anomaly in the ARMS system in January 1998, when he was conducting a search of the ARMS system for e-mails relating to Monica Lewinsky. While conducting this search, Barry noticed that the records retrieved by ARMS appeared to be missing an intermediate message between Monica Lewinsky and an EOP computer user. While ARMS had no record of this e-mail, Barry and a colleague were able to find the e-mail with a manual search of the server. Barry informed his superiors of this anomaly, but did not necessarily attribute it to a systemic problem with ARMS.

In late May and early June of 1998, Northrop Grumman contract employees at the White House discovered that there was a widespread problem with the ARMS system. Barry informed the Committee that he was made aware of the problem in July 1998, and began work on it soon thereafter. From July 1998 through 1999, Barry was involved in attempting to repair the ARMS system so that it would contain a complete and accurate archive of White House e-mails.

B. Barry's False Affidavit in the Filegate Lawsuit

Barry gave a deposition and filed a number of affidavits in *Alexander v. FBI*, a civil lawsuit regarding unauthorized access to FBI files. Barry offered testimony regarding the White House computer system generally, and the White House e-mail system specifically. On July 9, 1999, Barry filed an affidavit about the White House e-mail system in the *Alexander* case. (Attachment 1.) The purpose of Barry's affidavit was to explain how the White House would conduct the plaintiffs' request to search for e-mail relating to the case. Barry also explained how much that search would cost, and how much time it would take.

Paragraph 4 of Mr. Barry's affidavit states:

Since July 14, 1994, e-mail within the EOP system administered by the Office of Administration has been archived in the EOP Automated Records Management System (ARMS). With this current system, this e-mail is susceptible to being word-searched for a single character string (e.g. "FBI" or "FBI files") or a multiple character string ("and" and "or" searches) found on any one line of text.

Through testimony provided in interviews and hearings, documents, and representations made to the Committee by White House Counsel, we have learned that Paragraph 4 is utterly false. Furthermore, we have learned that Mr. Barry knew his statement was false when he made it.

1. Barry's Statement is False

As indicated above, in May or June of 1998, Northrop Grumman contract employees working for the EOP identified a significant problem with the EOP e-mail system. Incoming e-mail to a particular server named "Mail2" was not being collected and archived for future searches in ARMS. The Northrop Grumman employees were tasked with identifying the scope of the problem, and quickly learned that 246,000 e-mails on Mail2 as of June 18, 1998, had not been collected and archived in ARMS. This number represented approximately one out of every five e-mails on the server as of that date. This information was quickly communicated up the White House chain of command. By the following day, June 19, 1998, the President's Deputy Chief of Staff, John Podesta, and Counsel to the President, Charles Ruff, had both been briefed on the nature and scope of the problem. An initial repair was finished in November 1998, so that e-mails from November 1998 forward were captured by ARMS. However, between August 1996 and November 1998, e-mails coming into the Mail2 server from outside the White House were not captured by ARMS. This problem has been confirmed in sworn testimony by Northrop Grumman and White House employees.

Mr. Barry's affidavit contains the statement that "[s]ince July 14, 1994, e-mail within the EOP system administered by the Office of Administration has been archived in the EOP Automated Records Management System (ARMS)." By the accounts of every witness that this Committee has interviewed, including Mr. Barry, and the White House itself, this statement is false. The Mail2 error prevented a significant number of e-mails from being archived in the ARMS system between August 1996 and November 1998.¹

2. Barry Knew the Statement was False

The Committee has also received extensive evidence that Mr. Barry knew that the statement in his affidavit was false when he made it. In July 1999, when Mr. Barry filed his affidavit, he had known about the e-mail problem for a year. As the manager of the ARMS system, Barry was notified that there was a problem with ARMS in July 1998. At

¹ Barry may attempt to claim that his affidavit refers only to e-mail between users in the Executive Office of the President. Due to the technical nature of the Mail2 error, such e-mail would be captured on the ARMS system. However, such a narrow reading of the Barry affidavit is contradicted both by common sense, and the facts of the *Alexander* case. Barry's statement clearly refers to e-mails held within the EOP e-mail system, not e-mails between EOP users. This reading is supported by the context of the affidavit, in which Barry discusses the plaintiffs' request for a search of the e-mails of 30 different EOP staff. The plaintiffs' search request was not limited to e-mails between EOP users. Rather, it requested all e-mail on the relevant subject matter, regardless of the source. Furthermore, if the language in the affidavit was chosen intentionally to mislead, it raises significant questions about the state of mind of the attorneys involved in the drafting process.

the Committee's hearing on March 23, 2000, Barry testified he was informed of the problem in July 1998, and that after that point, he attended technical meetings in the summer of 1998 and discussed in great detail the nature and scope of the problem.

There is also extensive documentary evidence that Mr. Barry was aware of the ARMS problem beginning in the summer of 1998. Barry drafted many e-mails and reports about his work on the Mail2 problem, indicating that he was aware that there were a number of e-mails that were not archived in the ARMS system:

- On July 24, 1998, he wrote, "I continue to be involved in discussions regarding the Mail2 problem, but there has been no movement thus far on correcting the problems or getting the data over to ARMS." (Attachment 2.)
- On August 13, 1998, he wrote, "I am very concerned about several aspects of this problem. As far as I can tell, there is no movement underway to fix the problem and recover the lost records from the backup tapes. When I talk to Sandy Golas and John Spriggs or Bob Haas, they tell me that there is no movement on this project from their side and the last activity was the meeting that we had with Betty before she left on 7/28." In the same e-mail he wrote, "I feel the records must be recreated, and any searches need to be re-performed if the requestors feel it is necessary. This seems like a daunting proposition, but I do not see any other alternative. (Attachment 3.)

Therefore, when Mr. Barry submitted his affidavit in the Alexander case on July 9, 1999, he had been aware of the Mail2 problem for a year. He had been working on the problem, and had specific and detailed knowledge of the fact that there was a large number of e-mails that were not being archived within ARMS. Therefore, when Barry stated in his affidavit that "[s]ince July 14, 1994, e-mail within the EOP system administered by the Office of Administration has been archived in the EOP Automated Records Management System (ARMS)," he was aware that the statement was false and misleading.

C. Role of the Justice Department and the White House Counsel's Office

Mr. Barry was represented by the Justice Department and White House Counsel's office during the course of the *Alexander* case. It is my understanding that lawyers from the Justice Department and the White House Counsel's Office drafted Mr. Barry's affidavit. At the time, the Justice Department and the White House Counsel were apparently aware of the White House e-mail problems. Yet, they prepared an affidavit that was false, allowed Barry to sign that affidavit, and then filed it in federal court. The conduct of the lawyers from the Justice Department and White House raises a real question as to whether those individuals were involved in a criminal conspiracy to obstruct justice and commit perjury. Any perjury investigation of Mr. Barry should therefore include a thorough examination of possible perjury and obstruction of justice charges against the Justice Department and White House lawyers involved in preparing

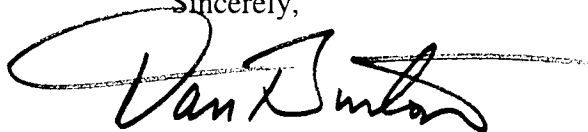
Mr. Barry's affidavit. Clearly, the Justice Department has a conflict of interest if it attempts to investigate these charges. Therefore, I will repeat my call for you to appoint a special counsel to investigate these charges against Mr. Barry, as well as the entire e-mail problem.

Conclusion

You have received repeated criticism for your handling of the campaign finance investigation. For more than three years, you have insisted that you can carry out a thorough and competent investigation of your direct superior and your own political party. However, the facts have shown otherwise, as the campaign fundraising investigation is widely regarded as a massive failure. The allegations of obstruction of justice relating to the White House e-mail problem present yet another clear case for the appointment of a special counsel.

In this case, your obligation to appoint a special counsel is obvious. As I pointed out earlier this week, Justice Department lawyers representing the White House have been attempting to prevent the discovery of these e-mails for almost two years. Now, these allegations against Mr. Barry raise the possibility that lawyers from the Justice Department and White House Counsel's Office conspired to present false testimony to a federal court. The Justice Department cannot investigate these allegations against itself. To attempt to do so would cripple the investigation, and continue to erode the little remaining trust that the Congress and the public have in you and the Department of Justice.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Burton", with a long horizontal flourish extending to the right.

Dan Burton
Chairman

cc: The Honorable Royce C. Lamberth, United States District Judge
Independent Counsel Robert Ray
Independent Counsel Ralph Lancaster
Independent Counsel Donald Smaltz
Independent Counsel David Barrett
Independent Counsel Carol Elder Bruce
Independent Counsel Curtis Von Kann
Senator John Danforth
The Honorable Henry A. Waxman, Ranking Minority Member

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARA LESLIE ALEXANDER, et al.,

Plaintiffs,

v.

FEDERAL BUREAU OF
INVESTIGATION, et al.

Defendants.

Civil Action Nos.
96-2123/97-1288 (RCL)

CONSOLIDATED ACTIONS

DECLARATION OF DANIEL A. BARRY

I, Daniel A. Barry, for my declaration pursuant to 28 U.S.C. § 1746, depose and state as follows:

1. My name is Daniel A. Barry. I am employed as a Computer Specialist by the Executive Office of the President ("EOP"), Office of Administration, Information Systems & Technology Division ("IS&T"). I have held this position since June 1992. My current responsibilities include electronic records management projects and EOP's Automated Records Management System (ARMS). Previously, my responsibilities included maintenance and implementation of EOP's former electronic mail ("e-mail") system, ALL-IN-1.

2. I previously provided declarations in this litigation dated March 4, 1998, and March 30, 1998, and testified at a deposition on June 11, 1998.

3. I have personal knowledge of the matters attested to herein.

4. Since July 14, 1994, e-mail within the EOP system administered by the Office of

Administration has been archived in the EOP Automated Records Management System (ARMS). With this current system, this e-mail is susceptible to being word-searched for a single character string (e.g., "FBI" or "FBI files") or a multiple character string ("and" and "or" searches) found on any one line of text.

5. There is an ongoing restoration and reconstruction process for backed-up, pre-July 14, 1994 e-mail. That process, which I described in my March 4, 1998 declaration, is nearly complete. Backed-up e-mail for all months between November 1992 and July 1994 has now been restored and reconstructed, with the exception of backed-up e-mail for the months of February 1993, and March 1993. Restoration and reconstruction of backed-up e-mail for the months of February 1993 and March 1993 is expected to be complete by mid-August 1999. As a result of the restoration process, pre-July 14, 1994 e-mail can be searched in same manner as described in paragraph 4, above.

6. I have reviewed the request of plaintiffs for a search of e-mail (attached). That request lists 30 individuals whose e-mail should be searched, as well as "all past and present members of Mrs. Clinton's staff, and all those who worked at the OPS during the Clinton Administration." It further requests that all such e-mail be searched for 36 listed words and phrases.

7. As explained below, I have estimated the time and cost involved in accomplishing the search proposed by plaintiffs of e-mail that is now searchable on-line for all the months between January 1993 and June 1999 as \$687,180, 702 hours of personnel time, and 1092 computer processing ("central processing unit" or "CPU") hours.

8. In arriving at this estimate, I have made certain assumptions: (1) that only records of

the White House Office will be searched; (2) that I would be provided a list of "all past and present members of Mrs. Clinton's staff, and all those who worked at the OPS during the Clinton Administration," and that the list of such names would be no more than 10 individuals; and (3) that plaintiffs' list of individuals means a search of all e-mail sent to or from such individuals (including "cc:" and "bcc:").

9. In order to conduct the search requested by plaintiffs, a computer specialist would spend approximately four hours setting up the search request. For the purposes of conducting e-mail searches, our office typically estimates that an hour of a specialist's time costs \$40. Accordingly, the cost of the initial set-up would be approximately \$160.

10. After the initial set-up, the search would involve several steps. The estimated cost and time for searching the e-mail from a single month are described below. The actual costs will vary depending on the volume of e-mail retrieved, as well as the volume of e-mail in a given month.

(a) A computer specialist would search the e-mail for the 36 words and phrases listed by plaintiffs. A search for the 36 words and phrases proposed by plaintiffs would take approximately four (4) CPU hours. For the purpose of conducting e-mail searches, our office typically estimates that one CPU hour costs \$600. Accordingly, the estimated cost of such computer usage for searching the words and phrases requested would be approximately \$2400.

(b) A computer specialist would then set-up the next phase of the search by individual. This set-up for the next phase would take approximately one (1) hour of a specialist's time, and cost \$40. This is in addition to the initial set-up time described in paragraph 9.

(c) A computer specialist would then search the e-mail recovered from the first step (of

the 36 words and phrases) for all e-mail to and from the approximately forty individuals identified. This step would take approximately 10 CPU hours and cost approximately \$6000.

(d) Lastly, the results would be printed. Since the proposed search includes such common terms as "update" and "Clinton," I would anticipate that a significant amount of e-mail would be recovered and printed. Although the actual cost will vary depending on the volume of e-mail retrieved and the volume of e-mail in a given month, I estimate that it would take approximately eight (8) hours and \$320 to print the results, yielding approximately 44,000 pages or 8 boxes.

11. In addition, I estimate the miscellaneous costs of doing such a search -- e.g., the paper, ink, etc. -- as approximately \$50.

12. Aside from the initial fixed set-up costs, the above estimates of \$8810 and nine (9) hours and 14 CPU hours are for searching the e-mail of a single month. That estimate would need to be multiplied by 78 if all e-mail for the months of January 1993 through June 1999 were searched. Accordingly, the estimated total cost if all e-mail for January 1993 through June 1999 were searched for the terms and individuals proposed by plaintiffs would be \$687,180, 702 hours of personnel time, and 1092 CPU hours.

13. The two types of tape drives used to read the IBM 3480 cartridge tapes are (1) Digital Equipment Corp. (Compaq) TA90E, and (2) Digital Equipment Corp. (Compaq) TKZ61.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9 of July, 1999.


Daniel A. Barry

**DANIEL A.
BARRY**
07/24/98 12:18:31 PM



Record Type: Record

To: James B. Wright [REDACTED]
cc:
Subject: Weekly for 7/24/98

E-mail reconstruction activity

- I attended the regular reconstruction status meeting this week.
- I was informed this week that a problem had been uncovered in the process the reconstructs the pager data. The problem caused valid pager messages to appear as duplicates and therefore not get processed. The problem has now been fixed for the current and future processs cycles but will have to be fixed for process cycles 1-9 (The previously delivered cycles). This problem will be corrected when the delivered tapes are cut to resolve the other two problems uncovered after production began (Truncation and incorrect file structure on anomaly records)
- I have received a goods and services request covering the purchase of new disks. I will review this next week and decide how to proceed. These disks will be needed prior to commencing the Daily tapes and they will allow more efficient processing if we purchase them sooner.

ARMS activity

- I coordinated the completion of 2 searches this week. One was a FOIA for CEQ records and the other was for WHO records.
- I spent a lot of time this week (10 hours) nursing both the tape processing for ARMS as well as the regulare records processing through their respective stages. The communications between the NOTES data and the ARMS system failed last week and the backup caused severe delays in processing that spilled over into this week. There also seems to have been an increase in traffic which further exarcebated the situation. I will continue to monitor the process so that it does not fall behind again.
- I have been contacted by WHO counsel (Karl Racine and Dimitri Nionakis) regarding two separate Search requests. I have only received 1 of them thus far and I will try to get it running over the weekend.

FAMCO Contract

- I attended a meeting with the NG project manager and the COTR in preparation for my role next week as acting COTR.

Additional activities


- I continue to be involved in discussions regarding the MAIL2 problem but there has been no movement thus far on correcting the problem or getting the data over to ARMS. The plan for fixing the problem has been submitted.

Planned Activities for next week:

- I will be acting COTR for the NG contract next week.
- I plan on getting the 2 search requests under way.

James B. Wright
08/13/98 07:37:13 AM

Record Type: Record

To: Daniel A. Barry/OA/EOP
cc: Kathleen K. Gallant/OA/EOP
bcc: Records Management
Subject: Re: Concerns 

Tony there as been some movement to get this back on the movement track. Kathy informed me yesterday that Paulette briefed Jim Welsh of NG that he can now proceed with developing a plan to get this effort going.

Certainly the Data Center and the Records Team has been left out of this matter and the result could be a great deal of work put upon us later.

I would suggest that we setup a meeting with Jim Welsh and see if we can find out his anticipated time schedule and general direction.

If you do not know him we should go over and introduce you to him today.
I will see if he is in today and set something up.

Is there anything else I should do in the short term?

Jim
DANIEL A.

DANIEL A.
BARRY
08/13/98 07:21:01 AM



Record Type: Record

To: James B. Wright/OA/EOP
cc:
Subject: Concerns

Jim;

This is a followup to our discussions on Tuesday regarding "the mail2 problem" or project X.

I am concerned about several aspects of this problem. As far as I can tell, there is no movement under way to fix the problem and recover the lost records from the backup tapes. When I talk to Sandy, John or Bob they tell me that there is no movement on this project from their side and the last activity was the meeting we had with Betty before she left (7/28).

Sandy has submitted a Goods and Services to Paulette to purchase 6 disks to hold the data on the VAX side.

The only people I have had contact with on this project are You, Cathy, Betty, Sandy, Bob and John. I have not spoken with any other Govt person on this and I am not at all clear what my role should be. I feel that the records must be recreated and any searches need to be reperformed if the requestors feel it is necessary... This seems like a daunting proposition but I do not see any other alternative.

Additionally, I feel that I can not walk away from this problem because any work that will be done to recover the records will directly impact ARMS and searching... also, as each day goes by, there is a risk that one of the affected accounts could be moved to another server (Dan Gunia continues to do his job while not knowing the impact) This would cause records to flood into ARMS but have corrupt data in them.

I appologize for the rambling nature of this memo but I hope it captures my concerns and frustration level.

Any help is appreciated.

Later... Tony